

Government of the District of Columbia  
Office of the Chief Financial Officer



Jeff DeWitt  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeff DeWitt  
Chief Financial Officer

**DATE:** April 29, 2014

**SUBJECT:** Fiscal Impact Statement – “Wage Theft Prevention Act of 2014”

**REFERENCE:** Bill 20-671, Committee Print as provided to the Office of Revenue  
Analysis on April 8, 2014

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**Conclusion**

Funds are not sufficient in the FY 2014 proposed supplemental budget and proposed FY 2015 through FY 2018 budget and financial plan to implement the bill. The bill will cost \$590,925 in FY 2015 (the assumed first year of operation) and \$2,269,761 in the FY 2015 through FY 2018 budget and financial plan.

The implementation of the bill is subject to inclusion in an approved budget and financial plan.

**Background**

Wage theft is a term used to describe when an employer does not fully compensate an employee for work completed, or at the promised wage rate. It can include practices such as paying subminimum wages, denying tips, or not paying earned overtime pay.<sup>1</sup> Although much of the behavior is illegal, there is very little reporting or prosecution, as employees are unable or unwilling to spend the time and resources to sue or fear retribution if they do.

The bill provides for penalties to employers who fail to pay earned wages, and establishes protections for workers, including prohibiting retribution to employees who file a complaint. Additionally the bill establishes a legal framework and standards for wage disputes, and requires the Mayor (through the Department of Employment Services and Office of Administrative Hearings) to review all complaints and adjudicate them through a hearing process.

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<sup>1</sup> “Wage Theft Across the Board,” the Editorial Board, *The New York Times*, April 21, 2014.

The bill increases<sup>2</sup> criminal penalties for employers found guilty of failing to comply with wage laws to \$10,000 for the first offense, and not more than \$25,000 for subsequent offenses. If an offense is willful, the employer may be fined \$25,000 for the first offense, \$50,000 for subsequent offenses, and spend up to 90 days in jail. Employers may also be subject to additional administrative penalties. The bill permits relief of all unpaid wages, reasonable attorney fees and costs to be made to the complainant. Additionally, the Mayor shall deny an application for a business license if the applicant has been found guilty within the last three years. Suspension of a business license may also occur if the licensee has failed to comply with an administrative order given regarding wage theft.

The bill outlines requirements for complaint documentation, including a requirement that filings must occur no later than three years after the last date upon which the violation is alleged to have occurred. Once filed, the Mayor must determine if the complainant has demonstrated a violation, and notify the parties. The parties then have a right to an administrative hearing on the Mayor's decision. An employer must admit or deny allegations within 15 days of receiving the written notice. If a hearing is to occur, it must occur within 30 days of a request for a hearing.

Within 90 days of the effective date of the bill, all employers must provide employees with an updated written notice - and retain proof that it was given to each employee - listing: a) employer contact information and b) the employee's rate of pay and the basis of that rate. Failure to provide notice to an employee will constitute evidence weighing against the credibility of the employer's testimony regarding the promised rate of pay.

### **Financial Plan Impact**

Funds are not sufficient in the FY 2014 proposed supplemental budget and proposed FY 2015 through FY 2018 budget and financial plan to implement the bill. The bill will cost \$590,925 in FY 2015 (the assumed first year of operation) and \$2,269,761 in the FY 2015 through FY 2018 budget and financial plan. The implementation of the bill is subject to inclusion in an approved budget and financial plan.

DOES will implement the requirements of the bill to track, investigate and adjudicate complaints according to the provisions of the law. It will require staff to process and investigate an estimated 106 additional complaints annually,<sup>3</sup> and fully adjudicate an estimated 53 cases annually.<sup>4</sup> Staff will also be required to manage the caseload, track complaints, and audit financial records of businesses involved in wage theft cases. The unit will also provide reports to Council and monitor the carrying out of penalties to employers.<sup>5</sup> Additionally, DOES will build a case management information system to manage data regarding complaints and legal process outcomes.

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<sup>2</sup> This is increased from the \$300 penalty currently mandated (See D.C. Official Code § 32-1307.)

<sup>3</sup> DOES received an average of 494 wage complaints annually from FY12 through FY13, and the Office of the Attorney General adjudicated 23 cases. This analysis assumes a 20 percent increase in complaint investigations as a result of the bill.

<sup>4</sup> Currently, the Office of the Attorney General (OAG) handles adjudication, and they managed 23 cases in FY 2013. This analysis assumes an Office of Administrative Hearing judge for DOES will hear all the cases previously heard by OAG, and that the total adjudications will be about 10 percent of all complaints.

<sup>5</sup> While it is possible the increased value of penalties may result in increased revenue from fines, there is not enough information at this time to expect a significant change in District revenues.

The Honorable Phil Mendelson

FIS: "Wage Theft Prevention Act of 2014," Bill 20-671, Committee Print provided to the Office of Revenue  
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<b>Fiscal Impact of Bill 20-671, "Wage Theft Prevention Act of 2014"</b>					
	<b>FY 2015<sup>(a)</sup></b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>Total FY 2015 – FY 2018</b>
<i>Personal Services for DOES Wage theft prevention unit<sup>(b)</sup></i>	\$452,325	\$465,895	\$479,872	\$494,268	\$1,892,361
<i>Non Personal Services DOES Wage theft prevention unit<sup>(c)</sup></i>	\$138,600	\$79,600	\$79,600	\$79,600	\$377,400
<b>Total cost</b>	<b>\$590,925</b>	<b>\$545,595</b>	<b>\$559,472</b>	<b>\$573,868</b>	<b>\$2,269,761</b>

<sup>(a)</sup> Assumes new unit would be established at the start of FY 2015.

<sup>(b)</sup> Includes one Administrative Law Judge at the midpoint of Grade 14 on the legal services salary schedule, three financial auditors at Grade 12, Step 5 on the career service schedule, and one program assistant at grade 8, step 5 of the career service schedule.

<sup>(c)</sup> \$59,000 of the non-personal services costs in FY 2015 are one-time start-up costs for equipment and database development. Ongoing non-personal services costs include transcription services fees for case stenographers.